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THE UNWED FATHER: CONFLICT OF RIGHTS IN ADOPTION PROCEEDINGS

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I. INTRODUCTION

The concept of natural fathers of illegitimate children having a constitutionally protected relationship with their children is relatively new, but not surprising.[1] At common law, the biological father of an illegitimate had no rights regarding his own child. Such children were *nullius filius,* the children of no one.[2] Later, they were considered *filius populi,* under the custody of the church.[3] Only when the natural father married the mother and acknowledged the children as his own was he considered to have legal rights regarding them.[4] Increasing concern with expanded interpretation of constitutionally protected rights and liberty interests has led to an extension of rights to putative fathers so that when the mother surrenders her children, dies, or remarries and consents for her new husband to adopt the children, the natural father has a constitutional avenue.[5]

The family unit does not simply coexist with our constitutional system, it is an integral part of it. The Supreme Court of the United States has long acknowledged that the due process clause of the fourteenth amendment protects "freedom of personal choice in matters of marriage and family life" as one of the fundamental liberties.[6] The Court has held that history, not only of the United States, but of western civilization, dictates a constitutional guarantee of privacy for the family.[7]

It is instructive to note that the Court conceptually views the family in a special position with respect to constitutional law.[8] Early cases reflect the historical tendency of the law to accord a superior legal right to the mother when it was necessary to choose between the parents in awarding custody.[9] For many years all jurisdictions

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1. *See generally* H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 613-14, 625-26 (1968).

2. *See* Note, *Father of an Illegitimate Child—His Right to be Heard,* 50 MINN. L. REV. 1071 (1966).

3. State *ex rel.* Lewis v. Lutheran Social Servs., 178 N.W.2d 56, 57 (Wis. 1970).

4. *Id.* at 65.

5. The term "putative father" will be used in this note to refer to one who claims to be the natural father of a child. *See generally In re* Malpica-Orsini, 370 N.Y.S.2d 511 (1975); 61 CORNELL L. REV. 312, 312-14 (1976).

6. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974), *cited in* Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 842 (1977).

7. Moore v. City of E. Cleveland, 431 U.S. 494, 502 (1977).

8. *See* Dobbs, *Foster Care and Family Law: A Look at* Smith v. Offer *and the Constitutional Rights of Foster Children and Their Families,* 17 J. FAM. L. 1, 16-18 (1978-79).

9. *See, e.g.,* May v. Anderson, 345 U.S. 528 (1953).

in the United States have recognized the mother as the natural guardian of the illegitimate child.[10]

II. CONSIDERATIONS OF THE FAMILY

In the 1940's, the Supreme Court recognized the right to marry and to have children as one of our basic civil liberties.[11] Later, in the 1950's, the Court began wrestling with the question of whether a state could determine custody rights of children in an ex parte divorce when the mother and children lived in another state. In *May v. Anderson,* the Court found that the full faith and credit clause was not proper justification to "cut off . . . [r]ights far more precious . . . than property rights . . . ."[12] The Court's problem centered around a conflict between the sanctity of the family, and its concern for upholding the full faith and credit clause. The problem was resolved by holding that a mother deserved as much protection in her rights to child custody as in her rights to alimony payments.[13] Thus, the children were allowed to remain with their mother, despite the fact that the *father* had legal custody.

May, standing alone, could be read as holding that in the absence of truly unusual circumstances, mothers hold all the rights afforded by the Constitution and fathers hold fewer. The first real challenge to this conception came twenty years later when an irrebutable presumption that all unwed fathers were unfit as parents was challenged.[14]

In *Rothstein v. Lutheran Social Services,* Jerry Rothstein claimed to be the father of an illegitimate boy who had been placed for adoption after the natural mother surrendered him.[15] The father was denied a hearing in Wisconsin and consequently appealed to the Supreme Court. By this time, the child had been placed with an adoptive family and while the Court ordered that Rothstein be given

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10. 10 AM. JUR. 2d *Bastards* § 60, at 889 (1963).

Most courts, until quite recently, would probably have agreed with the Supreme Court of Oklahoma in Bruce v. Bruce, 285 P. 30 (Okla. 1930):

> Courts know that mother love is a dominant trait in the heart of a mother, even in the weakest of women. It is of divine origin, and in nearly all cases far exceeds and surpasses the parental affection of the father. Every just man recognizes the fact that minor children need the constant bestowal of the mother's care and love.
>
> It is for these reasons courts are loath to deprive the mother of the care and custody of her children, and will not do so, . . . unless it clearly appears that she is an improper person to be intrusted with their care and custody.

Id. at 37.

11. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).
12. 345 U.S. 528, 533 (1953).
13. *Id.* at 534-36.
14. Stanley v. Illinois, 405 U.S. 645, 647 (1972).
15. 405 U.S. 1051 (1972).

a hearing, it directed the lower court to consider the length of time that the child had been with the adoptive parents.[16] Although subsequently the court on remand found Rothstein to be a fit parent, he was denied custody because the court found it to be in the "best interest of the child" to leave the child with the adoptive parents.[17]

The implications of *Rothstein* are clarified in light of *Stanley v. Illinois*.[18] The Court in *Stanley* held that a putative father has a right to a hearing when the custody of a child "he has sired and raised" is at issue. The natural mother of the illegitimate children had died, and the state of Illinois sought to take the children as wards. The Court expressly noted that the natural parents had lived together intermittently for eighteen years.[19] Once again, the Court dealt with the issue in terms of the "best interest of the child." The Court held that an unwed father must be treated exactly as a wedded father, otherwise, there was a violation of equal protection.[20] Mr. Justice White, writing for the majority, recognized that a state's interest in caring for children in the Stanleys' circumstances did not go much further than to insure that the putative father was a fit person to care for them. The Court chastised the State of Illinois for trying to take the easy way out in dealing with this important area of people's lives. Thus, the convenience of raising a presumption was not considered proper justification when a family unit was at stake.[21]

III. The Concept of the Family

Another major confrontation with concepts of "family" occurred in *Village of Belle Terre v. Boraas*.[22] A city ordinance in Belle Terre, New York, prohibited dwellings from being occupied by other than "single families," defined to mean one or more persons related by blood, adoption, or marriage, or not more than two unmarried per-

16. *Id.* at 1051.

17. The Supreme Court had remanded the case to the Supreme Court of Wisconsin which determined that the child should remain with his adoptive parents and not be placed in the care of a parent whom the child had never known. Lewis v. Lutheran Social Servs., 207 N.W.2d 826, 828 (Wis. 1973). The best-interest-of-the-child test varies from state to state. Some statutes specify factors that may be considered in applying the standard including the sex, age, and preference of the child. Other statutes contain presumptions based on the sex of the parent. However, while there is only a general concensus about what is best for a child, there is a strong, specific concensus about what is bad for the child (*e.g.*, physical abuse). Also, some short-term predictions about human behavior and parental care can be readily made (*e.g.*, chronic alcoholism or psychosis that would be difficult to modify).

18. 405 U.S. 645 (1972).

19. *Id.* at 646.

20. *Id.* at 649.

21. *Id.* at 658.

22. 416 U.S. 1 (1974).

sons.[23] Furthermore, boarding houses, fraternity houses, apartments, and other types of multiple dwellings were specifically prohibited by the ordinance. When a group of six college students leased a house in order to live together as a "family," and were found in violation of the law, they challenged the ordinance on several constitutional grounds. The students argued that "if two unmarried people can constitute a 'family,' there is no reason why three or four may not."[24] The Court rejected the petitioners' argument, holding that it was a matter for the legislature to decide, and that any boundary drawn by the law would include some and exclude others. The Court reasoned that since the ordinance provided for two people living together while unmarried, an inherent unfairness or animosity toward that lifestyle was not present. Moreover, the Court held the "family" classification not suspect, and therefore the ordinance was only required to be rationally related to a legitimate state objective and not subject to strict scrutiny on review.[25]

Mr. Justice Marshall, dissenting, expressed the view that the fourteenth amendment guarantees the right to "establish a home" as part of each citizen's liberty interest. "The selection of one's living companions involves similar choices as to the emotional, social, or economic benefits to be derived from alternative living arrangements."[26] The ordinance, Justice Marshall declared, should be struck down because it discriminates against mere lifestyle, allowing an unlimited number of blood-related or marriage-related persons to live together, but limiting the number of people who may have a valid relationship built out of love, friendship, and religious or other purposes.[27]

The Court's notion of "family" as related to concepts of blood and marriage was confirmed in 1977 in *Moore v. City of East Cleveland.*[28] The City of East Cleveland had sentenced Mrs. Moore to pay a $25 fine and spend five days incarcerated under an ordinance which, like Belle Terre's, limited homes to a "single family." Unlike Belle Terre's, however, the East Cleveland ordinance precluded certain categories of blood relatives from living together.[29] In Mrs. Moore's case, the ordinance precluded her grandson, whose mother was dead, from residing with her. The Supreme Court found

23. *Id.* at 2.
24. *Id.* at 7-8.
25. *Id.* (citing Reed v. Reed, 404 U.S. 71, 76 (1971); Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)).
26. 416 U.S. at 15.
27. *Id.* at 16.
28. 431 U.S. 494 (1977).
29. *Id.* at 496-97.

that while history counsels caution and retraint, it does not require "cutting off any protection of family rights at the first convenient, if arbitrary boundary—the boundary of the nuclear family."[30] In *Belle Terre,* the Court had rationalized that the increased car traffic, crowds, and noise associated with multiple-family conditions justified the city's concern.[31] However, when faced with an issue of grandmothers and grandsons the Court found that concerns of congestion and monetary burdens on the school system, parking problems, and other hazards were not justifiable rationales for the ordinance.[32] The Court set out a list of family rights that had been considered particularly important including: "freedom of choice with respect to childbearing, . . . *rights of parents to the custody and companionship of their own children,* [and] . . . traditional parental authority in matters of child rearing and education."[33] The Court then stated, "But unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment's Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case."[34]

Therefore, the Court's concept of the family is one of tradition, emphasizing the traditional modes of the nuclear family—a married couple with or without children—or the extended family, several generations all under the same roof. These models, or some reasonable variation thereof, including two unmarried persons, will protect the "family" against governmental intrusion.[35]

IV. The Conflict of Protected Interests

The Supreme Court was faced with conflicting interests of various

30. *Id.* at 502.

31. 416 U.S. at 9.

32. 431 U.S. at 499-500.

33. *Id.* at 500-01 (emphasis added).

34. *Id.* at 501. The Court emphasized its function under the due process clause by pointing out that this liberty interest as it pertains to the family is not specifically set out nor limited by the Constitution. The Court concluded:

> Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition . . . .
>
> Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.

Id. at 503-04 (footnotes omitted).

35. The Court stated that "[t]here *are* risks when the judicial branch gives enhanced protection to certain substantive liberties without the guidance of the more specific provisions of the Bill of Rights." *Id.* at 502 (emphasis in original).

agencies in *Smith v. Organization of Foster Families for Equality and Reform (OFFER).*[36] New York State procedures regarding removal of foster children from foster homes required ten days advance notification to foster parents and a departmental conference prior to removal. The children could then be transferred, but if the foster parents maintained their objections, an adversary administrative hearing with judicial review would be available. Foster parents, however, continued their allegations that there was insufficient due process protection for their liberty interests.[37] The Court concentrated on the adequacy of the removal procedures despite the appellees' (OFFER's) assertion that having a young child in a home for more than a year created the psychological equivalent of the natural family.[38]

Not surprisingly, the Court reached the conclusion that the relationship is not similar enough to that of a protected "family." The Court implied, however, that there is a degree of the family relation present and it is larger and in need of greater protection than other groups of unrelated individuals. Referring to its decision in *Belle Terre,* the Court stated that a foster family serves by fulfilling the child's emotional needs in the same way and to the same extent as a natural family. "For this reason, we cannot dismiss the foster family as a mere collection of unrelated individuals."[39] The Court pointed out that when the state has been "a partner from the outset," as it has in the foster family arrangement, state law is not so intrusive when it sets the bounds of the relationship. Furthermore, the relationship was created by statute and contract between foster parents and the State of New York, and was therefore held to be entitled to only a limited degree of constitutional protection.[40] But could not the same be said of the marriage relationship?

The Court in *OFFER* seemed to be struggling with the balance among the liberty interests of the foster parents, the natural parents, and the child.[41] In most cases the legal rights of the natural parents have not been terminated and if the parents have not been adjudicated unfit, they have an absolute right to get the children back at any time. Thus, a clash of procedural protection will be unavoidable when more than one party has a liberty interest. No matter what kind of liberty interest may arise in the foster family

36. 431 U.S. 816 (1977).

37. *Id.* at 842. The foster parents complained of procedures which removed the children not for cause, but for administrative reasons or to return the children to their natural parents.

38. *Id.* at 839.

39. *Id.* at 844.

40. *Id.* at 845.

41. *Id.* at 846-47.

by virtue of its relationship with a foster child, that interest fades considerably if the child is being removed in order to return the child to its natural parents.[42] The Court never actually resolved whether the foster family had a constitutionally protected "liberty interest," although dicta certainly implied that they did, but the Court held that New York procedure would have been adequate in any case.[43]

V. Protection for the Natural Unwed Father

As a result of *Stanley v. Illinois,* the practice of notifying and granting hearings to unwed fathers has become the norm.[44] In Florida, section 63.062 (1)(b), Florida Statutes, requires consent from known and legally recognized fathers prior to adoption and section 63.062 (4) provides for notice to known parents.[45] The statute has been held to provide that failure of the putative father to acknowledge and support his children severs his intervention right to all subsequent adoption proceedings.[46] This is one step beyond *Rothstein* which held that the child was to remain with an adoptive family in lieu of the father who had never actually lived with his illegitimate son.[47]

In re Malpica-Orsini, a New York case, held that state adoption laws entitling putative fathers to notice and a hearing, but permitting the adoption even if they withheld consent, were constitutional.[48] In Pennsylvania, courts have been reluctant to terminate parental rights without hearings which include the unwed father. The effect of this reluctance may be to force unwed mothers to have some third party come into court and swear that he is the father.[49] *Adoption of Walker,* decided after *Orsini,* held that to distinguish procedurally between unwed fathers and unwed mothers was illegal, based on the state's equal rights amendment.[50]

After *Stanley,* it was questionable whether the rights of the father would have been the same if the child had never lived with him. Some doubt also remained as to whether the Supreme Court in-

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42. *Id.* at 846-48.

43. *Id.* at 855-56.

44. *See* H. Krause, Family Law 685-89 (1976); 61 Cornell L. Rev. 312, 314-16 (1976); 81 Dick. L. Rev. 857, 858-59 (1977); 5 Fla. St. U.L. Rev. 480, 488 (1977).

45. Fla. Stat. § 63.062(1)(b), (4) (1977).

46. *See* Department of Health and Rehab. Servs. v. Herzog, 317 So. 2d 865 (Fla. 2d Dist. Ct. App. 1975) (putative father who had shown no interest in his child had no constitutional right to be notified of adoption proceedings). *See generally* 5 Fla. St. U.L. Rev. 480 (1977).

47. 207 N.W.2d at 826-28.

48. 331 N.E.2d 486, 491-93 (N.Y. 1975).

49. *See* 81 Dick. L. Rev. 857, 864-65 (1977).

50. 360 A.2d 603, 605-06 (Pa. 1976).

tended a putative father to have a right to veto a proposed adoption—by withholding consent—or if he merely had a right to participate in the adoption hearings.[51] In 1978, the Court's ruling in the case of *Quilloin v. Walcott* provided some answers and raised some new questions.[52]

The *Quilloin* case involved a constitutional challenge to the Georgia adoption statute, which provided that consent of both natural parents is necessary before a child may be adopted by a third person, except when the child is illegitimate.[53] In the case of illegitimates, only the consent of the natural mother is required. The Georgia law does make provision, however, for the natural father to legitimate the child without marrying the mother and thereby avoid the operation of the statute.[54]

The natural mother in *Quilloin* had been married to a man other than the child's natural father for about nine years. Her husband then sought to adopt the child. The boy had always lived with the couple and had never resided with his natural father.[55] Georgia had begun to notify putative fathers of illegitimate children who were being adopted, and when the natural father was notified, he filed an objection, a writ of habeas corpus for visitation rights, and a petition for legitimation.[56] All were denied, and the child was adopted over his objections. The Georgia Supreme Court affirmed the lower court decision. Mr. Quilloin, the putative father, appealed on the ground that the *Stanley* decision had given unwed natural fathers equal standing with natural mothers.[57]

The Court referred to *OFFER*'s enunciated distinctions between natural families and other types of legal relationships among the adults, the state, and the children.[58] Mr. Justice Marshall, writing for the majority in *Quilloin,* expressed the view that although the

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51. *See, e.g.*, 61 CORNELL L. REV. 312, 316 (1976).

52. 434 U.S. 246 (1978).

53. The Court referred to the Georgia statute, GA. STAT. § 74-403(3) (1978): "Illegitimate Children.—If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the State Department of Family and Children Services." 434 U.S. at 248-49 n.3.

54. A father of an illegitimate child may render the same legitimate by petitioning the superior court of the county of his residence, . . . praying the legitimation of such child. Of this application the mother, if alive, shall have notice. Upon such application, presented and filed, the court may pass an order declaring said child to be legitimate, and capable of inheriting from the father in the same manner as if born in lawful wedlock, and the name by which he or she shall be known.

Id. at 249 n.4.

55. *Id.* at 247.

56. *Id.* at 249-50.

57. *Id.* at 247-53.

58. *Id.* at 255.

interest of the child is paramount, that reason alone may not be sufficient to remove a child from his natural parents over their objection. On the other hand, the interest of the child may well be enough to remove the child from a foster home. The Court pointed out that rather than breaking up a family relationship, the adoption of the child in *Quilloin* would secure an existing one.[59]

Mr. Justice Marshall stated with regard to equal protection that treating an unwed father like Mr. Quilloin differently than a father who is divorced, but who did live with the child, is not improper. Mr Quilloin had never supported his son; however, in comparison, a divorced father would normally have borne a part of the responsibility of raising his child. He would at least have been the legal guardian of the child while married to the mother. Thus, the Court found that applying a standard of "best interest of the child" did not negate the natural father's liberty interest, and affirmed the ruling of the Supreme Court of Georgia.[60]

VI. AFTER *Quilloin v. Walcott*

The distinction implicit in the Court's decision between the type of unwed father in *Stanley,* and the father in *Quilloin* may offer some guidelines to state lawmakers so that they may find constitutionally permissible classifications for their statutes. Clearly, a biological father must be notified and allowed to be heard before the child may be adopted by someone else. Furthermore, the biological father will not be presumed unfit as a parent.

At the same time, *Quilloin* has raised some questions which will frustrate lawmakers when they attempt to define the limits of process which a state must accord a putative father. In other words, there remains a question of how far a state must go in seeking out and notifying putative fathers before granting adoptions on the consent of the mother alone.[61] *Quilloin* indicates that if the natural father has not been greatly involved with his child, minimal process such as publication in the legal notice section of the local newspaper would be sufficient.[62]

While protecting the rights of putative fathers, the Court and the lawmakers must eventually consider the rights of privacy which may be invaded. Clearly, there is potential for embarrassment if individuals are named as biological fathers falsely or in ignorance,

59. *Id.* at 255-56.

60. *Id.* at 256.

61. For a discussion of this question as it applies to Florida, *see generally* 5 FLA. ST. U.L. REV. 480 (1977).

62. *See generally* Dobbs, *supra* note 8.

as well as to actual fathers who wish to remain "unnamed." At least one state, Illinois, has considered this possibility and has placed a disclaimer certificate in its notifications which can be filled out and returned. The individual's name is then removed from the proceedings unless further legal action is pressed against him.[63] Whether this prevents damage to an innocent's reputation remains to be seen.

In reiteration, *Stanley* holds that a putative father may not be presumed unfit to be a parent, and if he wants to have the child in his custody, or to prevent adoption by someone else, his relationship with, and the best interest of, the child must be weighed in determining the outcome.[64] Furthermore, *Quilloin* has now made it clear that natural fatherhood alone will not give equal standing with a fit natural mother such that the natural father may withhold consent and block the adoption of the child by a third party.[65] Therefore, laws such as those of Florida and Georgia,[66] complete with a legitimation avenue which permits severing a putative father's right when the father has not acknowledged and supported his children, have passed constitutional scrutiny pursuant to the *Quilloin* analysis.

The apparent clarity of the state of the law, however, has now been thrown into some doubt by *Caban v. Mohammed.*[67] In *Caban* the Court resolved the issue not decided in *Quilloin.* That is, whether equal protection requirements preclude mothers from being treated differently than fathers by reason of gender. The Court held that New York State's adoption laws were unconstitutional because they allowed the natural mother to block an adoption by the natural father and his wife, without allowing the putative father to block the adoption of the child by the natural mother and her husband. The Court held that in order for the adoption statute to be constitutional, there had to be a substantial relationship between the statute and the state objective, that is, adoption. The Court found that no relationship existed. In other words the means did not constitutionally reach the desired end.[68] The Court, however, noted that the father in *Caban,* unlike the father in *Quilloin,* had lived up to his responsibilities and fulfilled his parental role with the children.[69] It

63. Act of Sept. 6, 1973, P.A. 78-531, § 1, ILL. REV. STAT. ch. 37, § 705-9.4 (1975).
64. 405 U.S. at 658.
65. 434 U.S. at 255-56.
66. FLA. STAT. § 63.062(1)(b) (1977); GA. CODE § 74-203 (1978).
67. 99 S. Ct. 1760 (1979).
68. *Id.* at 1763-69.
69. *Id.* at 1763. In fact, the children in *Caban* had resided with their natural father for more than two years.

is far too early to evaluate the impact of this decision. Whether a statute like New York's is violative of equal protection in that it draws a distinction between married fathers and unmarried ones is a question left unanswered. The Court also left unanswered whether a putative father may have his rights terminated in adoption proceedings when there has been no showing of unfitness.[70] Only state laws such as those of Pennsylvania, with its equal rights amendment, can be sure of conformity with *Caban*. Laws of states like Georgia and Florida, which are similar to the New York statute, may eventually require revision.[71]

VII. CONCLUSION

Had Mr. Quilloin availed himself of the Georgia procedure that allows legitimation without marriage, and had he lived up to his responsibilities as a father, he could have held up adoption of his son indefinitely, since he would have had the same rights as a natural wedded father.[72] Although the Court has not resolved whether the due process and equal protection clauses demand that this procedure be made available by a state, it would seem likely that the Court would find it to be necessary.

The Court has recognized in *Rothstein, OFFER, Quilloin,* and *Caban* that persons who have no biological relationship with the child may develop a constitutionally protected interest which will give them standing to claim that the best interest of the child is served by adoption. Where the link with the biological parent is weak, as in *Quilloin,* and the link with the "psychological" parents is strong, as in *Rothstein,* the latter will probably continue to prevail. On the other hand, *Belle Terre,* (where there was no "best interest of the child" to consider) indicates that there are limits to how far the Court will extend its concept of the family.

Lawmakers must consider how they want to balance these interests. There is certainly a valid state interest in the welfare of the child. A natural extension of that interest is the encouragement of

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70. *See id.* at 1766-69.

71. The *Caban* Court stated:

> In sum, we believe that § 111 [of the New York statute] is another example of "overbroad generalizations" in gender-based classifications. The effect of New York's classification is to disciminate against unwed fathers even when their identity is known and they have manifested a significant paternal interest in the child. The facts of this case illustrate the harshness of classifying unwed fathers as being invariably less qualified and entitled than mothers to exercise a concerned judgment as to the fate of their children.

Id. at 1769 (citations omitted).

72. *See* Outman, *Georgia's New Adoption Laws,* 13 GA. ST. B.J. 172, 172-74 (1977).

adoption of illegitimates. Although adoption cannot be promoted at the expense of protected liberty interests of either natural parent, the state cannot allow the liberty interest of one parent to outweigh that of the other. The only constitutionally satisfactory remedy may be to apply the same rather rigid requirements to both parties, and where there is a conflict, to terminate the rights of the parent with the weakest standing. On the other hand, perhaps the solution is to allow adoption of a relatively loose sort, which would not require the termination of parental rights of either party. The disadvantages of such a system would at least be no worse than the present child custody laws.